IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2911 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VINUBHAI BHURABHAI VAGHELA BHANGIVAS,

Versus

G E B

Appearance:

1. Special Civil Application No. 2911 of 2000

MS SADHANA SAGAR for Petitioner No. 1

NOTICE SERVED for Respondent No. 1

MR SP HASURKAR for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 29/03/2004

ORAL JUDGEMENT

The grievance of the petitioner is that though he has been working on the part timer basis, his service has

not been regularized till date.

1.1. The petitioner was appointed as part time sweeper on 1st December, 1991, initially for two years. He was working under respondent no.2. The term of the employment of the petitioner was extended from time to time. Ultimately, by order dated 31st December, 1998, he was appointed as regular part timer. Initially, he was paid salary of Rs.150=00 per month. He made representations requesting the respondents to absorb him in the regular service in view of the Government Resolution dated 26th December, 1980. He thereafter wrote letter dated 7th September, 1998, drawing attention of the authorities, the decision rendered by this Court in Special Civil Application No. 1209 of 1994. However, his request was not accepted. He, therefore, approached this Court by filing Special Civil Application No. 4305 of 1999. The said petition was disposed of by learned Single Judge of this Court (Coram : S.K. Keshote, J.) vide order dated 8th September, 1999. In view of the said order, the petitioner was required to make representation and that was made on 16th September, 1999. The respondent however, did not accept the request and rejected his demand for regularization of service. He, therefore, approached this Court by filing Misc. Civil Application no. 451 of 2000 for revival of the said petition which was duly granted by this Court by order dated 8th September, 1999. The learned Single Judge, however, granted permission to file fresh petition. That is how the present petition is filed.

2. As against that, no affidavit has been filed by the other side and the averments made in the petition remain uncontroverted.

3. The question regarding regularization of service on temporary or part time employee who has put in number of years of service has been considered and decided by this Court on 17th February, 2004 in Special Civil Application No. 10518 of 1998, which was filed against the present respondent - Board. In view of the said judgment, the present petition is required to be allowed since the issue involved in it stands squarely covered by the decision in the aforesaid matters and it is hereby ordered to be allowed with the following directions :-

The respondents are, therefore, now required to be directed that irrespective of the Circular of 21st August, 1995, they shall consider the case of petitioner for appointment on permanent post in Class-IV and if the permanent posts are found vacant, the petitioner shall be

appointed on the same in accordance with his claim, in the matter of seniority and the Regulations and if otherwise, he is not ineligible. Appointment should not be denied on the ground of overage or on the ground that it may amount to giving a back-door entry. This exercise to be carried out as early as possible but in any case not later than 30th May, 2004. If need be, the petitioner can make appropriate representation, which will be considered in light of this judgment and in particular, the direction given therein.

The petition is, therefore, partly allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

[AKSHAY H. MEHTA, J.]

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